

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: July 31, 1986

TO: R. W. Burgreen, Assistant Chief
FROM: City Attorney
SUBJECT: Use of Federally Seized and Forfeited Asset
Proceeds

This office has received a number of questions from the department and from others concerning permissible uses of proceeds of assets seized and equitably transferred under the provisions of the Comprehensive Crime Control Act of 1984. We have reviewed the available guidelines and have contacted the United States Department of Justice, Asset Forfeiture Office, Washington, DC for some clarification. We have concluded that the proceeds received from seized assets may be used for any law enforcement purpose which directly involves the police department and which was not previously budgeted for using other funds. The availability of forfeited assets for equitable transfer was codified by Public Law 98-473, the Comprehensive Crime Control Act of 1984. Section 309 of the Act enables the equitable transfer of drug-related forfeited property to an assisting state or local law enforcement agency. The legislative history for the section reads, in pertinent part, as follows:

Section 309 amends U.S.C. 881(e) to achieve two purposes. First, it provides that the Attorney General may transfer drug-related property forfeited under title 21, United States Code, to another Federal agency, or to an assisting State or local agency, pursuant to section 616 of the Tariff Act (19 U.S.C. 1616), as amended in section 318 of the bill. Often, State and local law enforcement agencies give significant assistance in drug investigations that result in forfeitures to the United States. However, there is presently no mechanism whereby the forfeited property may be directly transferred to these agencies for their official use. This amendment, in conjunction with the Tariff Act

amendment cited above, will permit such

transfers and thereby should enhance important cooperation between Federal, State, and local law enforcement agencies in drug investigation

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S. Rep. No. 225, 98th Cong., 2d Sess. 4,
reprinted in 1984 U.S. Code Cong. and Ad.
News, 3182, 3399.

The Act amended 21 U.S.C. section 881(e) to read, in pertinent part:

Whenever property is civilly or
criminally forfeited under this title the
Attorney General may -

(1) retain the property for official use or
transfer the custody of ownership of any
forfeited property to any Federal, State, or
local agency pursuant to section 616 of the
Tariff Act of 1930 (19 U.S.C. 1616); . . .

The Attorney General shall ensure the
equitable transfer pursuant to paragraph (1)
of any forfeited property to the appropriate
State or local law enforcement agency so as to
reflect generally the contribution of any such
agency participating directly in any of the
acts which led to the seizure or forfeiture of
such property. A decision by the Attorney
General pursuant to paragraph (1) shall not be
subject to review

The Attorney General approved guidelines for seized and forfeited property on May 24, 1985. Attorney General's Guidelines on Seized and Forfeited Property, 50 Fed. Reg. 24052 (1985). Section III. D. 3. of the guidelines provides that requests from participating law enforcement agencies must include:

. . . C. . . .

. . . (3) A statement of the intended use for
the property; . . .
and:

. . . (e) Property will be transferred only in
cases where the tangible property or cash will
be credited to the budget of the state or
local agency that directly participated in the
seizure or forfeiture, resulting in an
increase of law enforcement resources for that
specific state or local agency.
(Id. at 24053).

The Customs Service published similar guidelines for disposition of property seized and forfeited by customs officers with participation by state or local law enforcement agencies. Guidelines for Release of Seized and Forfeited Property to State and Local Enforcement Agencies, 51 Fed. Reg. 6608 (1986). Of note is Section III. 3. c. which requires the requesting agency to provide, inter alia, information on ". . . the extent to which transferred funds will be credited directly to the budget of the state or local agency involved, resulting in an increase of law enforcement resources for that state or local agency." (Id. at 6610).

The guidelines do not further indicate any particular limitation on use by the law enforcement agency. In a conversation with the Asset Forfeiture Office, Department of Justice (Ms. Lynn Mattucci, Director) we were advised that the guidelines were deliberately drafted to permit wide discretion by state and local law enforcement agencies in use of transferred assets and funds from sale of seized and forfeited assets. Ms. Mattucci indicated that the Justice Department considered expenditures to be appropriate when they are: (1) related to law enforcement or crime prevention; (2) directly involve agency participation; and (3) were not a replacement for other funds previously budgeted. With respect to particular programs discussed:

Drug awareness/crime prevention - there is no problem in using the seized assets funds for increasing, enhancing, improving or adding new programs for drug awareness, crimestoppers, neighborhood watch, etc. provided the program is conducted directly by the law enforcement agency and uses law enforcement personnel in the operation of the program. The Police department can thus use these funds to hire an extra officer/employee to conduct programs in schools, to purchase and operate a vehicle for this purpose, to purchase materials for the program, and for other program costs; the department cannot, however, transfer the funds to the school district for operating such a program.

Aviation program - the seized asset funds can be used almost without limit to operate the recently seized and forfeited Bell helicopter and Cessna 337 airplane for this year and successive years. Ms. Mattucci

indicated that not only "patrol" type flights, but also "administrative" type flights which included police personnel on police business were proper for use of these funds.

Salaries - there is a general prohibition against use of seized asset funds to pay salaries (Guidelines, supra, section IV. E. 1. a.). However, the Department of Justice considers this prohibition to apply only to regular compensation of permanent budgeted state and local agency employees. Use of seized asset funds would be proper to pay the salaries of individuals specifically hired to operate and maintain the seized aircraft, to pay individuals hired for specific unbudgeted programs, or to pay unbudgeted overtime to regular officers for law enforcement purposes.

Ms. Mattucci indicated that the Department of justice intention was to review the guidelines after approximately three years. She also indicated that there are no instances thus far of any censure or other adverse action involving any state or local law enforcement agency for improper expenditure of these funds. In summary, our research has indicated that, at present, there is extensive discretion allowed in expenditure of proceeds from federally seized and forfeited assets. The City may properly expend these funds for any law enforcement or crime prevention purpose which directly involves the Police Department and does not amount to a replacement of otherwise budgeted funds.

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